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MONTANA LEGISLATIVE HISTORY

Chapter 218 19 99

Bill H _____ S 466 Original bill & history X C

H. Committee on BUSINESS & LABOR			S. Committee on LABOR & EMPLOYMENT RELATIO		
Hearing Date(s)	3/10/99	X C	Hearing Date(s)	2/18/99	X C
EXECUTIVE ACTION	3/10/99	X C	EXECUTIVE ACTION	2/18/99	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes X No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 466

INTRODUCED BY M. HALLIGAN

AN ACT CLARIFYING WORKERS' COMPENSATION LAWS TO PROVIDE THAT A LICENSED OCCUPATIONAL THERAPIST MAY CONDUCT A FUNCTIONAL CAPACITIES EVALUATION; AMENDING SECTION 39-71-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters

presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.

(5) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 2. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of SB 466 *(SB0466.ENR)*
Processed for the Web on April 1, 1999 (10:30AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of the bill for the bill's primary sponsor.

Status of this Bill | 1999 Session | Leg. Branch Home
This bill in WP 5.1 | All versions of all bills in WP 5.1

Prepared by Montana Legislative Services
(406)444-3064

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 18, 1999 at 3:11 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 466, SB 479, SB 508, 2/17/1999
Executive Action: SB 432, SB 466, SB 479, SB 508

HEARING ON SB 466

Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula**

Proponents: **Janet Bauer, Occupational Therapist, Great Falls**
George Wood, Executive Director, Montana Self-Insurer's Association
Nancy Butler, State Fund
Bob Worthington, Executive Director, Montana Municipal Insurance Authority
Ray Barnicoat, Montana Association of Counties

Opponents: **None.**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, informed the Committee two years ago, former **SEN. STEVE BENEDICT** carried a bill which changed Workers' Compensation laws and one item in the re-drafting of that legislation left out 'occupational therapist'. They are now included on page 2 of the bill as individuals who are able to do a functional capacity evaluation. This bill only adds them to the language.

Proponents' Testimony:

Janet Bauer, Occupational Therapist, Great Falls, stood as a proponent to SB 466 **EXHIBIT(las40a01). Ms. Bauer** also handed in **EXHIBIT(las40a02).**

George Wood, Executive Secretary, Montana Self-Insurer's Association, supported this legislation and recommended a "do pass".

Nancy Butler, State Fund, informed the Committee they are currently using occupational therapists and would appreciate the clarification to the law.

Bob Worthington, Montana Municipal Insurance Authority, supported SB 466.

Ray Barnicoat, Risk Manager, Montana Association of Counties Workers' Compensation Trust, stood in support of this bill.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

None.

Closing by Sponsor:

SEN. HALLIGAN closed by saying "I close".

{Tape : 1; Side : A; Approx. Time Counter : 8 - 44}

HEARING ON SB 479

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Tom Crane, President, United Food & Commercial Worker's Union, Local #8**
Don Dahl, Machinist, Representing Self
Todd Thun, Montana Nurses Association
Don Judge, Montana State AFL-CIO
Gene Fenderson, Montana Joint Heavy & Highway Committee
Al Smith, Montana Trial Lawyer's Association

Opponents: **George Wood, Executive Secretary, Montana Self-Insured's Association**
Jim Nys, Society For Human Resource Management
Bob Worthington, Montana Municipal Insurance Authority
Ray Barnicoat, Montana Association of Counties
Chris Gallus, Montana Chamber of Commerce
Leo Ward, Montana School Groups Insurance Authority
Lois Menzies, Director, Department of Administration

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, stated the purpose of SB 479 is to provide a two-year employment protection for individuals who have been injured on the job in the course of their employment. At present, in law there is no requirement that if one were injured on the job and they did recover within that two-year period, they would actually be in a position to receive their job back again. If a person is in a physical line of work which requires some degree of threat and is injured, he or she could permanently be replaced despite the fact they might recover from that injury. Consider the uncertainty this puts an employee in. If they are in good faith and involved in a recovery program, they know they may not be able to receive their position back again once they are healed. Ultimately, for everyone the goal is an early return to work. If they cannot do

Mr. Wood responded the increase in costs to the self-insurers would go up. The self-insurers paid just about $22M in benefits last year. Another 4% of $22M is approximately what their costs would increase.

CHAIRMAN KEATING stated then everybody's rates would go up, depending upon the number of injuries and the fact they seem to have a higher number of various kinds of injuries or greater frequencies.

Closing by Sponsor:

SEN. COCCHIARELLA closed by stating she did not believe the Committee got the full picture of what is going on. **Nancy Butler** handed out charts regarding permanent partial disability, maximum weekly benefits in the region. We are 199th in the region. That is how much money the claimant receives in their pocket. That is how much money that person is expected to live on. They adjusted that amount to our population. The charts also show the ability to get a job is relative to the population. The reason this increase in benefit is important is that it may give someone a better chance to become re-employed. The only option they have after that doesn't happen is welfare. These people have been working, and injured while employed, and most are severely injured. Do they deserve to end up on welfare or should we increase their benefit a little bit to give a little more time for rehabilitation to work? It is difficult enough to be on Workers' Compensation and be in Montana to find another job. But when a person is only receiving that average permanent partial, maximum weekly benefit which is $205.50 it is not easy. The only difference in this bill is how many weeks that person receives it. This increase is only to help people become re-employable, to get a larger benefit to maybe help with their rehabilitation. She was disappointed some of the proponents mentioned this bill couldn't stop an exclusive remedy case. The purpose for Workers' Compensation in 1912 and 1913 was to provide an insurance policy to employers so they wouldn't be sued and loose their business when someone was injured or died at the work site. She contends with this bill we would be going in the right direction. She urged the Committee to support this bill.

{Tape : 2; Side : A; Approx. Time Counter : 98 - 120}

EXECUTIVE ACTION ON SB 432

Motion/Vote: SEN. THOMAS moved that **SB 432 BE TABLED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 466

Motion/Vote: **SEN. MCNUTT** moved that **SB 466 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 479

Motion: **SEN. THOMAS** moved that **SB 479 DO PASS.**

Discussion:

SEN. WALTER MCNUTT commented he does not have a lot of employees nor a lot of prospects for a lot of employees. His company has been involved in a situation where they had a worker out for approximately eight months and they put that worker back on. His concern is this going to impact small, medium and large businesses. He does not feel this is an equitable situation.

SEN. COCCHIARELLA explained this bill is a dilemma for her, because she can remember a time she worked at the State Fund. An employer phoned her and explained he ran a KOA Campground. The second maintenance man hired for the season fell off the lawnmower, hit his head, and is in the hospital and won't return to work for at least six months. The law states that injured workers must have preference. This person was in the middle of summer tourist season and needed to hire someone else. After six months, the KOA season is over. If the injured worker were released in some capacity to work, and he is not physically or mentally capable to do that particular job, that man would have to be re-hired. When the injured worker's spot is filled and they are there for 18 months, they have learned the position, then that person is out the door. If there is not an opportunity in that place of business to put that 18 month employee back in somewhere, are they on unemployment? Every single person who fills a spot would have to be hired on a temporary basis, which may conflict with other bargaining provisions. She does not believe this will work.

Substitute Motion/Vote: **SEN. THOMAS** made a substitute motion that **SB 479 BE TABLED. Substitute motion carried 8-1 with SEN. BARTLETT voting no.**

EXECUTIVE ACTION ON SB 508

Motion: **SEN. COCCHIARELLA** moved that **SB 508 DO PASS.**

Discussion:

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 10, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 217, SB 229, SB 245, SB 305, SB 466 (3/3/99), 4/2/1999
Executive Action: SB 245, SB 466, SB 103, SB 272, SB 113

Gene Fenderson, MT Joint Heavy and Hiway
{Tape : 3; Side : A; Approx. Time Counter : 314 - 413}

Jerry Driscoll, MT Council on Construction and Trades
{Tape : 3; Side : A; Approx. Time Counter : 413 - 438}

Don Halverson, Business Manager, Plumbers and Pipe Fitters, Missoula.
{Tape : 3; Side : A; Approx. Time Counter : 438 - 500}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 10}

Questions from Committee Members and Responses: Reps. Bookout, Simon, Brown, and Krenzler question witnesses.
{Tape : 3; Side : B; Approx. Time Counter : 10 - 274}

Closing by Sponsor: Senator Thomas closed SB 305. Rep. Sliter to carry on house floor.
{Tape : 3; Side : B; Approx. Time Counter : 274 - 326}

HEARING ON SB 466

Opening Statement by Sponsor: Senator Halligan, SD 34 introduced SB 466.
{Tape : 3; Side : B; Approx. Time Counter : 326 - 336}

Proponents' Testimony: Nancy Butler, Legal Council, State Fund
{Tape : 3; Side : B; Approx. Time Counter : 336 - 354}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: Senator Halligan closed SB 466.
{Tape : 3; Side : B; Approx. Time Counter : 354 - 380}

EXECUTIVE ACTION ON SB 466

Motion/Vote: REP. TREXLER moved that **SB 466 BE CONCURRED IN.** Motion carried unanimously.
{Tape : 3; Side : B; Approx. Time Counter : 380 - 390}